

SETTLEMENT AGREEMENT
BETWEEN
CONSUMER ADVOCACY GROUP, INC.
AND
COLORS IN OPTICS, LTD.

Consumer Advocacy Group, Inc. ("CAG") and Colors In Optics, Ltd. ("Colors"), enter into this agreement ("Settlement Agreement") to settle CAG's allegations of violation of California Health & Safety Code §§25249.6, *et seq.* ("Proposition 65") in the distribution of certain eyewear products. CAG and Colors are collectively referred to as the "Parties" to this Settlement Agreement.

This Settlement Agreement is intended to resolve disputed claims and allegations between the Parties, and the additional entities released herein, for the purpose of avoiding prolonged and costly litigation with no admission of liability or the validity of any claim or allegation. The effective date of this Settlement Agreement shall be the date upon which it is fully executed by both Parties hereto (the "Effective Date").

1.0 Introduction

1.1 CAG is a California-based entity that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.

1.2 Colors has licensed, imported, sold and distributed sunglasses, eyeglasses and other eyewear products, including Southpole, Jessica Simpson, Rocawear, Unionbay, Steve Madden and Andrea Jovine brand sunglasses,

eyeglasses and other eyewear products licensed for sale and distribution by Colors (referred to throughout as the "Covered Products"). The Covered Products are only limited to those licensed, imported, sold and/or distributed by Colors.

1.3 CAG alleges that Covered Products contain Diethyl Hexyl Phthalate, also known as Bis (2-ethylhexyl) phthalate, (DEHP), and that Covered Products were distributed without a warning required by Proposition 65.

1.4 On January 1, 1988, the Governor of California added DEHP to the list of chemicals known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP to the list of chemicals known to the State to cause developmental male reproductive toxicity. This addition took place more than twenty (20) months before CAG served its "Sixty-Day Notice of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986" ("Sixty-Day Notice") relating to the claims and allegations resolved by this Settlement Agreement, which are further described below.

1.5 DEHP is referred to hereafter as the "Listed Chemical."

1.6 On or about October 5, 2012, CAG served Wicked Fashions, Inc., SouthPole, Ross Dress For Less, Inc., Ross Stores, Inc., Ross Dress for Less, and certain relevant public enforcement agencies with a Sixty-Day Notice alleging failure to warn of exposure to the Listed Chemical in Covered Products.

1.7 On or about October 19, 2012, CAG served The TJX Companies, Inc., T.J. Maxx of CA, LLC, dba T.J. Maxx, The TJX Companies, Inc., dba T.J. Maxx, With You, Inc., and certain relevant public enforcement agencies with a Sixty-

Day Notice alleging failure to warn of exposure to the Listed Chemical in Covered Products.

1.8 On or about December 7, 2012, CAG served The TJX Companies, Inc., T.J. Maxx of CA, LLC, T.J. Maxx of CA, LLC dba T.J. Maxx, and certain relevant public enforcement agencies with a Sixty-Day Notice alleging failure to warn of exposure to the Listed Chemical in Covered Products.

1.9 On or about January 11, 2013, CAG served The TJX Companies, Inc., T.J. Maxx of CA, LLC, T.J. Maxx of CA, LLC dba T.J. Maxx, Steven Madden, Ltd., and certain relevant public enforcement agencies with a Sixty-Day Notice alleging failure to warn of exposure to the Listed Chemical in Covered Products.

1.10 On or about January 11, 2013, CAG served Seattle Pacific Industries, Inc., Ross Dress for Less, Inc., Ross Stores, Inc., Ross Dress for Less, Inc. dba Ross Dress for Less, and certain relevant public enforcement agencies, with a Sixty-Day Notice alleging failure to warn of exposure to the Listed Chemical in Covered Products.

1.11 On or about January 14, 2013, CAG served Steven Madden Ltd., Ross Dress for Less, Inc., Ross Stores, Inc., Ross Dress for Less, and certain relevant public enforcement agencies with a Sixty-Day Notice alleging failure to warn of exposure to the Listed Chemical in Covered Products.

1.12 On or about March 4, 2013, CAG served The TJX Companies, Inc., T.J. Maxx of CA, LLC, T.J. Maxx of CA, LLC dba T.J. Maxx, Colors, and certain relevant public enforcement agencies with a Sixty-Day Notice alleging failure to warn of exposure to the Listed Chemical in Covered Products.

1.13 On or about March 4, 2013, CAG served Colors, and certain relevant public enforcement agencies with a Sixty-Day Notice alleging failure to warn of exposure to the Listed Chemical in Covered Products.

1.14 On or about May 5, 2013, CAG served Iconix Brand Group, Inc., Studio IP Holdings, LLC, The TJX Companies, Inc., T.J. Maxx of CA, LLC, T.J. Maxx of CA, LLC dba T.J. Maxx, and certain relevant public enforcement agencies with a Sixty-Day Notice alleging failure to warn of exposure to the Listed Chemical in Covered Products.

1.15 The Parties enter into this Settlement Agreement to settle disputed claims and allegations between the Parties, as set forth herein, concerning compliance with Proposition 65 by Colors, the other recipients of the Sixty-Day Notices, the other entities released in Sections 2.0-2-4 herein, and the Covered Products (the "Dispute").

1.16 By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Parties, the other recipients of the Sixty-Day Notices or any entity released in Sections 2.0-2.4 herein, of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission or evidence of fault, wrongdoing, or liability by Colors, the other recipients of the

Sixty-Day Notices or any entity released herein, or any of their respective officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum. Except for the allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that the Parties may have against one another in any other pending legal proceeding as to allegations unrelated to the Dispute or the claims released herein.

2.0 Release

2.1 This Settlement Agreement is a full, final, and binding resolution between CAG, on the one hand, and (a) Colors and the recipients of the Sixty-Day Notices referenced herein, and each of their respective owners, shareholders, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, licensors licensees, predecessors, successors and assigns, including without limitation Wicked Fashions, Inc., Southpole, Seattle Pacific Industries, Inc., (Unionbay Division), Steven Madden, Ltd., With You, Inc., Iconix Brand Group, Inc., and Studio IP Holdings, LLC, (collectively "Releasees"); and (b) all entities to whom Releasees, or any of them, directly or indirectly provide, distribute or sell Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including without limitation Ross Dress For Less, Inc., Ross Stores, Inc., Ross Dress for Less, The TJX Companies, Inc., T.J. Maxx of CA, LLC, dba T.J. Maxx, and The TJX

Companies, Inc., dba T.J. Maxx ("Downstream Releasees"), on the other hand, of any violation or claimed violation of Proposition 65 or any statutory or common law claim that has been or could have been asserted against the Releasees and/or Downstream Releasees regarding exposing persons to the Listed Chemical and the failure to warn about exposure to the Listed Chemical arising only in connection with the Covered Products manufactured, shipped and/or otherwise distributed prior to the Effective Date by Colors, even if sold by Downstream Releasees after the Effective Date. Color's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 with respect to the Listed Chemical in Covered Products for both Releasees and Downstream Releasees for any Covered Products distributed and/or sold by Releasees and/or Downstream Releasees after the Effective Date.

2.2 CAG, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waive and release with respect to the Covered Products all rights to institute or participate in, directly or indirectly, any form of legal action, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) (collectively "Claims"), against Releasees and/or Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted, only to the extent that such claims relate to Releasees' and/or Downstream Releasees' alleged exposure of persons to the Listed Chemical contained in the Covered Products, or any

failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemical contained in the Covered Products.

2.3 It is intended by the Parties that the releases provided in this Section 2.0-2.4 shall prevent CAG from asserting any Claims against Releasees and/or Downstream Releasees that arise under Proposition 65 or any other statutory or common law, to the extent that such claims relate to Releasees' and/or Downstream Releasees' alleged exposure of persons to the Listed Chemical or any failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemical in the Covered Products.

2.4 CAG and its past and current agents, representatives and attorneys acknowledges that they are familiar with Section 1542 of California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

CAG, on behalf of itself and its past and current agents, representatives, attorneys, successors, and/or assignees expressly waive and relinquish any and all rights and benefits which they may have under, or which may be conferred on them by the provisions of Civil Code § 1542, as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the released matters.

3.0 Colors' Duties

3.1 Colors agrees, promises, and represents that all Covered Products manufactured after March 31, 2013 will be reformulated to a point where the level of DEHP in the Covered Products does not exceed 0.1% by weight.

4.0 Payments

4.1 Colors agrees to pay a total of forty-five thousand dollars (\$45,000.00) within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Payment to CAG: Six-thousand dollars (\$6,000.00) shall be paid to Consumer Advocacy Group, Inc. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212. By the Effective Date, CAG shall provide Colors with CAG's Employer Identification Number.

4.1.2 Attorneys' Fees and Costs: Thirty-eight thousand dollars (\$38,000.00) of such payment shall be paid to Yeroushalmi & Associates, as CAG's attorneys, for reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating and bringing this matter to Colors' attention. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212. By the Effective Date, Yeroushalmi & Associates shall provide COLORS with its Employer

Identification Number.

4.1.3 **Penalty:** Colors shall issue two separate checks for a total amount of one-thousand dollars (\$1,000.00) as penalties pursuant to Health & Safety Code § 25249.12: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of seven-hundred and fifty dollars (\$750.00), representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of two-hundred and fifty dollars (\$250.00), representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$750.00. The second 1099 shall be issued in the amount of \$250.00 to CAG and delivered to: Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

5.0 Authority to Enter Into Settlement Agreement

5.1 CAG represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind CAG to this Settlement Agreement.

5.2 Colors represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Colors to this Settlement Agreement.

6.0 Report of the Settlement Agreement to the Office of the Attorney General of California

6.1 CAG shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' execution of this Settlement Agreement.

7.0 Execution in Counterparts and Facsimile

7.1 This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document. An electronically transmitted facsimile or portable document format (PDF) signature shall be as valid as the original.

8.0 Modification of Settlement Agreement

8.1 Any modification to this Settlement Agreement shall be by mutual written agreement and signed by the Parties.

9.0 Application of Settlement Agreement

9.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, the Parties, the Releasees and the Downstream Releasees identified in Section 2 above.

10.0 Enforcement of Settlement Agreement

10.1 Any party may file suit before the Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in Sections 10.2-10.3 of this Settlement Agreement, to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

10.2 No action to enforce this Settlement Agreement may be commenced or maintained, and no notice of violation related to the Covered Products may be served or filed against Colors by CAG, unless the party seeking enforcement or alleging violation notifies the other party of the specific future acts alleged to breach this Settlement Agreement at least 90 days before serving or filing any

action or Notice of Violation and the entity receiving the notice fails to comply with the requirements set forth in Section 10.3 below. Any notice to Colors must contain (a) the name of the product, (b) specific dates when the product was manufactured by Colors for sale in California after the Effective Date without either reformulation or a Proposition 65 compliant warning, (c) the store or other place at which the product was available for sale to consumers, and (d) any other evidence or other support for the allegations in the notice.

10.3 Within 30 days of receiving the notice described in Section 10.2, Colors shall either (1) send the store or other place at which the product was available for sale to the public a letter directing that the offending product be immediately removed from inventory and returned to Colors for full credit, including shipping costs, or (2) refute the information provided in the notice under Section 10.2. Should the parties be unable to resolve the dispute, any party may seek relief under Section 10.1.

11.0 Notification Requirements

11.1 Any notice required or permitted hereunder shall be effective only if given in writing and delivered in person, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For CAG:

Reuben Yeroushalmi
YEROUSHALMI & ASSOCIATES
9100 Wilshire Boulevard, Suite 610E
Beverly Hills, CA 90212

For Colors:

Chris Locke
Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
San Francisco, CA 94104

Any party may change its designee(s) for purposes of notification by providing written notice of such change pursuant to this section.

12.0 Severability

13.1 If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.


13.0 Governing Law

14.1 The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by reason of law generally, or as to the Listed Chemical and/or the Covered Products, then Colors shall provide written notice to CAG of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Products are so

affected.

CONSUMER ADVOCACY GROUP, INC.

Dated: 6-21-13

By: 

Printed Name: MICHEL SASSOON

Title: Executive director

COLORS IN OPTICS, LTD.

Dated: _____

By: _____

Printed Name: _____

Title: _____

affected.

CONSUMER ADVOCACY GROUP, INC.

Dated: _____


By: _____

Printed Name: _____

Title: _____

COLORS IN OPTICS, LTD.

Dated: 6/26/13

By: 

Printed Name: SANFORD HUTTON

Title: President